

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications))	
and Energy on its own motion into the billing services))	D.T.E. 01-28
to be provided by electric distribution companies to))	Phase II
competitive suppliers.))	
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**INITIAL COMMENTS OF
WESTERN MASSACHUSETTS ELECTRIC COMPANY**

I. INTRODUCTION

On May 9, 2001, the Department of Telecommunications and Energy ("Department") issued a Notice of Inquiry ("NOI") into the rules and procedures by which electric distribution companies provide billing services to customers and competitive suppliers in their service areas. On June 7, 2001, a technical session was held at the Department's offices. Western Massachusetts Electric Company ("WMECO" or the "Company") participated in this technical session.

During the technical session, the Department requested that participants file comments concerning several topics. In particular, the Department requested comments pertaining to: (1) whether the addition of a third billing option in which suppliers can remit a single bill to a customer which includes both regulated utility charges and competitive generation charges is permissible under the Electric Utility Restructuring Act ("Act"); (2) the allocation of partial payments in the event a supplier chooses the complete billing option offered by the distribution company and the

allocation of partial payments as it applies to Standard Offer and Default Service; and (3) credit and collection alternatives.

WMECO appreciates the opportunity to comment to the Department on these issues and hereby submits its written comments below to the three topics identified by the Department. As a preface to the Company's comments, WMECO wishes to state that it is fully supportive of competitively-supplied electricity service in its service territory. As the Company indicated in its June 14, 2001 comments to the Department on Competitive Market Initiatives, it is appropriate for the Department to explore avenues by which customers' opportunities to access the competitive market for their energy supply can be enlarged. In the Company's opinion, however, being pro-competition does not mean that competitive suppliers should be allowed to engage in activities that are expressly prohibited by statute or activities that have been examined and have been determined by the Department to be detrimental to customers and distribution companies. The Department should continue to foster competition in a manner that is consistent with law, regulation and sound public policy.

II. THE GENERAL LAWS DO NOT ALLOW A SINGLE BILL FROM A COMPETITIVE SUPPLIER.

A. Background

Under the previous system of electric utility regulation, electric distribution companies were the only entity that could send bills to customers. As customer choice of supplier began to be considered, however, discussion was initiated concerning the ability and the appropriateness of non-regulated entities issuing bills

to customers. By the time the Department opened an investigation into developing model terms and conditions governing the relationship between distribution companies and competitive suppliers (D.P.U./D.T.E. 97-65), three billing proposals were under discussion. The three were: (1) a single bill from the distribution company for both regulated and unregulated service; (2) one bill from the distribution company for regulated service and one bill from the competitive supplier for unregulated service; and (3) a single bill from the competitive supplier for regulated and unregulated service. Because it was a third possibility, the single bill from a competitive supplier became known as the 'third billing option'.

D.P.U./D.T.E. 97-65, p. 48 (December 31, 1997).

The pros and cons of the third billing option were raised in D.P.U./D.T.E. 97-65 during hearings and in written comments. However, before the Department issued a decision in D.P.U./D.T.E. 97-65, the Act was signed into law by the Governor.

B. The Electric Utility Restructuring Act Precludes the Third Billing Option.

In the Act, the Legislature established a new regimen for electric utility regulation in the Commonwealth. As part of this change the Legislature addressed and was very explicit as to the billing options permissible in the new restructured environment. The Act set forth two and only two options: "(1) single bill from the distribution company that shows such charges; or (2) two bills: one from the non-utility supplier that shows energy-related charges, and one from the distribution

company that shows distribution-related charges.” Chapter 164 of the Acts of 1997, § 193, codified in G.L. c. 164, § 1D.

The Legislative history of the Act demonstrates that the third billing option was explicitly under consideration by the Legislature in the late stages of the debate that culminated in the enactment of the restructuring law on November 25, 1997. This is illustrated by the drafts of legislative bills that were issued in October and November 1997. On October 29, 1997, the Legislature’s Joint House and Senate Committee on Government Regulations issued draft restructuring language that provided for a third billing option. The third billing option was also included in the subsequent bill that was issued by the House Ways and Means Committee on November 7, 1999. This third billing option language was included in the bill that passed the House shortly thereafter (see Attachment A, pages from the House-passed version of the restructuring bill).

By November 13, 1997, however, the Senate decided to allow only the first two billing options and bar the third billing option (see Attachment B, pages from the Senate Ways and Means bill). The House agreed with the Senate’s prohibition and the final language signed into law by the Governor included the exact language of the Senate Ways and Means Committee’s bill as it pertained to the allowed billing options. Courts have ruled that deletions of language, such as this, from legislative bills are normally presumed to be intentional. *Green v. Wyman-Gordon Company*, 422 Mass. 551, 556; 664 N.E.2d 808, 812 (1996).

Accordingly, not only was the third billing option not adopted by the Legislature, the legislative history of the Act shows that it was explicitly considered and rejected.

C. The Department Recognized That the Act Precludes the Third Billing Option.

The Department recognized that the Act precluded further consideration of the third billing option. In its Order in D.P.U./D.T.E. 97-65 the Department stated that it supported at some level the “idea of a third billing option” but, citing the language in G.L. c. 164, 1D, the Department found that the “third [billing] option that would permit competitive suppliers to bill customers for both distribution and generation service is not one of the billing options stipulated in the Restructuring Act. Therefore, the Department will not include the third billing option in its Model Terms and Conditions at this time.” Order, p. 53.

The understanding that the Legislature had precluded a third-billing option was also reflected in the Department’s “Rules Governing the Restructuring of the Electric Industry,” 220 CMR 11.00 *et seq.* (February 20, 1998). Those regulations provide for, and deal exclusively with, the first two billing options.

Finally, in its “Report to the Legislature Pursuant to Section 312 of the Electric Restructuring Act, Chapter 164 of the Acts of 1997” (December 29, 2000) (hereinafter referred to as the “Report”), discussed below, the Department stated that “billing services provided to customers by one competitive entity would not affect other customers in a distribution company’s service territory. However, similar to metering, the introduction of competitive billing would require the

development of rules, regulations and procedures *not currently permitted by law* (emphasis provided). Report, pp. 28-29.

D. The Department's Investigation Under Section 312 of the Act Confirmed That the Third Billing Option Would Continue To Be Prohibited.

Acknowledging that it had precluded the third billing option in the Act, the Legislature established a process for possible legislative change in Section 312 of the Act. Section 312 directed the Department, in conjunction with the Division of Energy Resources, to investigate whether, among other topics, customer billing “should be unbundled and provided through a competitive market” and “whether in so doing substantive savings accrues to consumers, and whether such substantive savings can be effected with little, or no, disruptions to employee staffing levels of those distribution companies conducting those activities.”

The language of Section 312 emphasizes that the change to billing options needed legislative approval and that the Department was to look to customer savings and employee effects in making any recommendation to the Legislature. Section 312 also provided that the Department was to file its report on customer billing by January 1, 2001, including any recommendations and drafts of legislation necessary to implement its recommendations.

In compliance with the Legislature's request for a report on billing (along with metering and information services) the Department issued a Notice of Inquiry (“NOI”) on June 12, 2000 (D.T.E. 00-41). As part of the Department's NOI, comments were received from dozens of parties, either individually or in groups, and a public hearing and technical session were held. Report, pp. 3-4 (December

29, 2000). The pertinent pages from the Report are attached as Exhibit C and WMECO will not repeat here the discussion in D.T.E. 00-41 in which the Department weighed the pros and cons of competitive billing.

There can be no debate as to the Department's findings with respect to competitive billing, including the third billing option. The Department found that:

billing related service should not be unbundled from other monopoly services provided by distribution companies and provided by a competitive market because such unbundling: (1) would be complex to implement; (2) would not produce benefits (*i.e.*, a supplier single-bill option) that could not be produced through the existing regulatory framework; (3) may not result in cost savings to customers; and (4) would result in significant disruptions in distribution company staffing levels.

Accordingly, the Department recommended that "the General Court undertake no legislative action to allow competition of billing-related services as it relates to the electric industry..."(Report, p. 42). As far as WMECO is aware, the General Court has followed the Department's recommendations and the language of G.L. c. 164, § 1D, has not been amended.

E. The Department Does Not Have The Latitude To Adopt Practices Which Circumvent the Legislature's Prohibition Of The Third Billing Option.

WMECO is aware that the Department in its Report stated that it would "open a proceeding to establish rules and procedures by which a supplier single bill option will be made available to customers and competitive suppliers" (p. 32). It also stated that "the single-bill option, can be readily accommodated within the existing regulatory framework" (Report, p. 28). In addition, prior to the issuance of the Report, the Department had offered for discussion proposals that would have

the distribution company forward either the portion of its electric bill to a competitive supplier or forward its billing determinants to the competitive supplier. D.T.E. 00-41, Tr. pp. 73-74 (October 31, 2000).

The meaning of these Department statements is unclear to WMECO. If it means, however, that there is a possibility that the Department may wish to provide for the third-billing option through policy or regulation when the Legislature has enacted a statute prohibiting such an option, WMECO takes strong exception. Such a position is contrary to the basic relationship between the Legislature and state agencies. State agencies and political subdivisions of the state have no authority to take a position or issue regulations inconsistent with existing statutory language. *Church v. Boston*, 370 Mass. 598, 601 (1976); *Bloom v. Worcester*, 363 Mass. 136, 155 (1973); *Hellman v. Board of Registration in Medicine*, 404 Mass. 800, 804-5 (1989)

The direct prohibition on the third billing option also means that the Department is also barred from putting the third billing option into place through some type of “back-door” policy. That is, the Department cannot circumvent the law by couching the practice in different terms or by making it a condition tied to other regulation of the distribution company.

Further, the Department should be under no illusions that the third billing option is similar to customer billing practices that presently exist. Currently, distribution companies do attempt to accommodate customer requests to send bills to a third party, where that third party is, for example, a relative or legal representative of the billing party. While these bills may be sent to a remote

address, the third party does not receive the distribution company's billing determinants to then repackage the information for the customer. Further, the third party is serving only as a surrogate entity for payment of the bill sent by the distribution company. Such practices do not circumvent the Act's prohibition against sending a bill to a competitive supplier for the purpose of sending one bill to a customer.

F. Conclusion

As described above, the Legislature prohibited the third-billing option after a full consideration of the issue and the Department fully recognized that the Act precluded the third billing option. The Legislature provided the Department an opportunity to submit recommendations to change the law with respect to billing options through the Section 312 process but the Department declined to recommend any changes. Therefore, until the Legislature takes further action the issue is closed and the Department must respect the mandate to allow only two billing options: (1) one bill from the distribution company, and (2) one bill from the distribution company and one bill from the competitive supplier.

III. WMECO CAN AGREE WITH A REASONABLE ALLOCATION OF PARTIAL PAYMENTS.

A. A Change to the Treatment of Arrearages Is Warranted.

At this time, partial payments made by WMECO's customers who have selected a competitive supplier are applied first to all distribution company charges, oldest to newest, then to generation charges, oldest to newest. WMECO acknowledges that this method has produced unintended results. Specifically, customers' payments which cross in the mail against a newly issued bill are applied to both the now-past due distribution charges and the current distribution charges first, even though the current bill is not yet due. As a result, the supplier may not be paid and the customer's account becomes delinquent. Municipal accounts, which are afforded a longer payment term, may be more likely to be impacted. The current process has also confused customers who expect delinquent balances to be paid before current balances, delayed payment to competitive suppliers and in some cases led to late payment charges applied against the customer's account.

In order to remedy what appears to be an unnecessary problem with the settlement process, WMECO proposes to change the current method for allocating partial payments to one in which payment is made in the following order: (1) distribution company charges oldest up to current; (2) competitive supplier charges oldest up to current; (3) current distribution company charges; and (4) current competitive supplier charges. During the Department's June 7, 2001 Technical Session, WMECO stated that it would be ready to implement this change quickly.

Tr. p. 114.

The proposed change does not require amending the Company's Terms and Conditions. The Terms and Conditions state: "[I]f a Customer pays the Company

less than the full amount billed, the Company shall apply the payment first to Distribution Service and, if any payment remains, it shall be applied to Generation Service” (M.D.T.E. No. 1024A § 8B). WMECO is maintaining the order of payment required.

B. An Allocation of Partial Payments on a Pro-Rata Basis is Not Warranted.

An alternative method of dealing with partial payments discussed at the June 7, 2001 technical session was the allocation of partial payments on a pro-rata basis between the distribution company and competitive suppliers. As discussed below, this allocation was fully investigated and rejected by the Department once and there is no basis for reversing the Department’s decision now.

1. The Pro-Rata Allocation is Contrary to Consumer Protection Principles.

Generally, the majority of customers pay on time and will not be affected by changes in payment allocation. However, a small subset of the whole, delinquent customers, will be affected. Among the delinquent customers are a group of customers with low or fixed incomes or other special needs. Unfortunately, this group of customers will be the most harmed by the pro-rata method.

Under the pro-rata approach, those who cannot afford to pay will be considered by the distribution company to be delinquent more frequently (because of the pro-rata allocation their entire payment will not be applied to distribution charges which are eligible for disconnection). These customers will receive a greater number of termination notices and earlier disconnections. Additionally, customers in this group who are dropped by their competitive supplier and returned

to Default Service will do so with a higher balance of distribution charges than those who remained on Standard Offer or Default Service without ever going to the competitive market. This certainly is not in the best interest of those customers.

There was agreement at the Department's August 5, 1997 hearings in D.P.U./D.T.E. 97-65 that it was important to institute rules that fully protect consumers. At those hearings the Attorney General stated:

With regard to partial payment, our position is that it should be applied first to the distribution company's bill, because to the extent that there is a default on the generation service, they're [the customers] going to have to be able to get to default service before you run through the full panoply of distribution requirements. So you're going to make sure they're as current as possible on the distribution bill. [D.P.U./D.T.E. 97-65, August 5, 1997, Tr. p. 23.]

The Attorney General further stated that:

the concern is the distribution portion of the bill is that which keeping it current will prevent disconnection of the consumer when they've switched from the competitive supplier to default service. That would be the opposition of the prorating. So long as the distribution is kept current, they would then fall into default service, and then the Department's normal billing and termination processes would take place and it would take some time for the customer to get shut off and they'd have a greater period or time to negotiate alternative to keep their service on. [Tr. p. 46.]

Consumer protection remains an important concern for all parties and the Attorney General had it exactly right in D.P.U./D.T.E. 97-65. The implementation of a pro-rata method to allocate payments would be a significant degradation to customer protections.

2. The Pro-Rata System Is Contrary to Customers' Expectations.

The existing payment system, as adjusted in subsection A, above, is what customers expect when they pay their bills. Customers want and intend their payments be applied entirely toward delinquent charges that can result in service termination. Conversely, the pro-rata payment allocation is not what customers expect and will inevitably lead to confusion and customers dissatisfaction. Any change to payment posting should meet, not further retreat from, customers expectations.

3. A Pro-Rata Allocation Is Not More 'Equal'.

During the June 7, technical session, comments were made suggesting that it was somehow more equal to prorate payments because this would reflect a more fair treatment between distribution company charges and competitive supplier charges. As WMECO understands it, proration means that if a customers' overall bill in one month is \$100 and \$40 was due to the distribution company and \$60 was due to the competitive supplier, and the customer paid only \$50, there would be an allocation as follows: the distribution company would be paid \$20 (50 percent of the charges due) and the competitive supplier would be paid \$30 (50 percent of the charges due). In particular, it was suggested that prorating bills would make the treatment of Standard Offer and Default Service payments consistent with the treatment of competitive supplier payments.

Given the unequal playing field that exists, specifically the significant additional obligations that distribution companies bear as opposed to competitive suppliers, WMECO disagrees that there is anything inherently consistent with the

proposed proration because the services and obligations of the parties are so fundamentally different. It is wrong-headed to assume that a simplistic division of payment is the proper policy to pursue.

Distribution companies have a wealth of obligations under the Act not applicable to competitive suppliers. Distribution companies are obliged to be the provider of last resort through Standard Offer and Default Service and to procure power for these services. Distribution companies also have an obligation to serve all customers, and are not free to pick and choose with whom they do business. Further, regulations concerning disconnection of low income or medically protected customers are applicable to distribution companies but not applicable to competitive suppliers. Nor are the substantial procedures and noticing requirements distribution companies must abide by to disconnect service to non-paying customers applicable to competitive suppliers.

In contrast, competitive suppliers can manage risk by refusing to serve customers with a poor payment history. Jurisdictions have recognized these differences in deciding that payment of regulated charges first is in the best interest of the customer. The Department also came to this conclusion in its order in D.P.U./D.T.E. 97-65 dated December 31, 1997. It stated:

The Department agrees with the Utility Companies that competitive suppliers will have means of avoiding bad debt expenses or receiving payment from customers that will not be available to distribution companies, such as pre-selecting customers and terminating service to customer who do not pay. Bad debt for distribution companies can become a cost of service borne by all ratepayers, so shifting the risk to competitive suppliers who can control the risk is fairer. [Tr. p. 54.]

With respect to Standard Offer and Default Service payment allocation, distribution companies offer both Standard Offer and Default Service to customers through tariffs. Competitive suppliers that provide Standard Offer and Default Service are paid by the Company regardless of customer payment. As such, generation charges provided through these options are subject to disconnection.

Standard Offer and Default Service generation receivables are tracked separately in the Company's system. Partial payments are allocated first to distribution charges then generation charges in order of aged receivable. Applying payments in this manner accomplishes the consumer protection objectives discussed previously; that is, applying payments to charges that are subject to disconnection first. Credit and Collection systems operate by a set of rules based on age of delinquency. Allocating payments to charges subject to disconnection by age of delinquency reduces the number of customers eligible for disconnection.

IV. CREDIT AND COLLECTION ALTERNATIVES SHOULD BE VOLUNTARY.

At the Department's June 7 technical session in this proceeding, there was discussion concerning the practice of the billing party buying the non-billing party's receivables as a way to aid the non-billing party, typically the competitive supplier. WMECO is open to the possibility of purchasing receivables and it has entered into receivable arrangements in the past. See D.T.E. 97-13 (April 13, 1997). However, it is also WMECO's position that this is a commercial transaction that should be left to the marketplace. That is, the billing party should never be *required* to purchase

the non-billing parties' receivables. Billing parties should be allowed, voluntarily, to purchase non-billing parties' receivable under terms and conditions that are mutually agreeable.

Mandating the purchase of non-billing parties' receivables can result in massive shifting of risks and costs (*i.e.*, related to non-paying accounts) from non-billing parties to billing parties. The current billing options shield the distribution company from these non-payment risks and allow competitive suppliers to manage effectively their risk by choosing which customers to enroll and by terminating service to non-paying customers.

V. CONCLUSION

WMECO is fully-supportive of competitively-supplied electricity service in its service territory and strongly believes that competitive suppliers should not be disadvantaged within the current regulatory system. The price of Standard Offer and Default Service, against which suppliers compete, is undoubtedly the most important factor with respect to competition. The current billing system, however, has been specified in large measure by the Legislature and the Legislature has seen fit to allow only two billing options, neither of which is the sole billing option that some competitive suppliers have sought. Until the relevant statutory language is changed, neither the Department nor any other party has the authority to allow sole competitor billing (the third billing option) either explicitly or implicitly.

WMECO and the other distribution companies, however, are open to changes that do aid the competitive process without harming customers. In this

vein, WMECO strongly supports amending the partial payment allocation as described in Section III.A, above. Competitive suppliers will be paid more promptly and customers will be afforded the same consumer protections that are currently in place. On the other hand, prorating bills, as discussed at the June 7 technical session, is not in the best interest of the distribution companies' customers. Prorating was fully discussed by the Department in D.P.U./D.T.E. 97-65 and it was found wanting. Nothing has changed to rectify these flaws in the intervening period and the Department should not change its policy.